

**ORIGINAL**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

**DOCKET FILE COPY ORIGINAL**

Amendment of the Commission's  
Regulatory Policies to Allow Non-  
U.S. Licensed Space Stations to  
Provide Domestic and International  
Satellite Service in the United States

IB Docket No. 96-111

and

Amendment to Section 25.131 of the  
Commission's Rules and Regulations to  
Eliminate the Licensing Requirement  
for Certain International Receive-Only  
Earth Stations

CC Docket No. 93-23 RM-7931

and

COMMUNICATIONS SATELLITE  
CORPORATION Request for Waiver of  
Section 25.131(j)(1) of the Commission's  
Rules As It Applies to Services Provided  
Via the INTELSAT K Satellite

File No. ISP-92-007

To: The Commission

COMMENTS OF SKYBRIDGE L.L.C.

Skybridge L.L.C. ("Skybridge"), by its attorneys, hereby submits these comments on the above-captioned Further Notice of Proposed Rulemaking (the "FNPRM") adopted by the Commission on July 16, 1997. The FNPRM seeks public comment on a "proposed framework to allow satellites licensed by other countries to provide service in the United States" pursuant to the United States' obligations under

No. of Copies rec'd  
List ABCDE

the WTO Basic Telecommunications Agreement (referred to as the "Group on Basic Telecommunications" or the "GBT").<sup>1/</sup>

Skybridge filed an application with the Commission in February 1997 for authority to launch and operate the "SkyBridge System," a global network of nongeostationary orbit communications satellites operating at Ku-band, designed to provide broadband services in the Fixed-Satellite Service.<sup>2/</sup> The rules proposed in the FNPRM are not directly applicable to Skybridge, a U.S. entity that expects to receive a U.S. license. Skybridge plans to provide satellite services in multiple WTO member countries, however, and therefore the United States' implementation of the GBT may directly affect the quality of access Skybridge receives in other WTO member countries.

The GBT should be fully and clearly implemented in a manner that minimizes the Commission's regulatory oversight and discretion to the greatest degree possible, consistent with the Commission's statutory obligations under the Communications Act of 1934, as amended. To the extent that the Commission retains discretion to deny licenses to satellite systems licensed by WTO member countries other than the United States ("WTO Satellite Systems"), other WTO member countries may also retain the same discretion, which could be applied in a

---

<sup>1/</sup> FNPRM at ¶1.

<sup>2/</sup> In the Matter of the Application of SkyBridge L.C.C. for Authority to Launch and Operate a Global Network of Low Earth Orbit Communications Satellites Providing Broadband Services in the Fixed Satellite Service, File No. 48-SAT-P/LA-97, filed February 28, 1997.

discriminatory fashion against satellite systems licensed in the United States ("U.S. Satellite Systems") seeking access to foreign markets.

I. The Commission Should Eliminate the ECO-Sat Test for WTO Satellite Systems

Skybridge supports the Commission's proposal to eliminate the effective competitive opportunities test (the "ECO-Sat Test") for WTO Satellite Systems. Eliminating the ECO-Sat Test and replacing it with a presumption in favor authorizing WTO Satellite Systems to provide service in the U.S. greatly enhances competition in the U.S. market and generally ensures that the United States will comply with the most-favored-nation and national treatment obligations set out in the General Agreement on Trade in Services ("GATS") and the GBT.

The Commission, however, has explicitly reserved its right to deny licenses to WTO Satellite Systems where it determines: (1) the application poses a "very high risk to competition"; or (2) that granting the application is not in the public interest due to national security, law enforcement, foreign policy, or foreign trade concerns.<sup>3/</sup> Denial of a license to a WTO Satellite System based on either foreign policy or trade concerns would raise serious questions with respect to the United States' obligations under GATS and the GBT, and could lead to other WTO member countries exercising similar discretion vis a vis U.S.-licensed satellites and/or challenging the Commission's rules in the WTO.

---

<sup>3/</sup> FNPRM at ¶ 37.

Unlike national security or law enforcement,<sup>4/</sup> GATS does not provide any exception for denying most-favored-nation treatment based on foreign policy or trade concerns. The fundamental point of most-favored-nation treatment is to ensure that governments do not provide more favorable treatment to one country over another based on "trade concerns." Discriminatory treatment of prospective licensees from WTO member countries based on trade concerns is, therefore, essentially a repudiation of most-favored-nation treatment. The public interest analysis itself, moreover, and in particular the standards regarding foreign policy and trade concerns, are vague and undefined, leaving the Commission with broad discretion to reject an application.

Skybridge strongly urges the Commission to consider whether the foreign policy and trade policy prongs of the public interest test are consistent with the United States' obligations under GATS; there does not seem any way to explain how these two prongs of the test could be applied in a GATS-consistent manner. SkyBridge further urges the Commission to consider the impact of these two aspects of the public interest test on U.S.-licensed satellites that will be seeking access to other markets under the auspices of the GBT.

---

<sup>4/</sup> A decision to deny a petition for national security or law enforcement reasons, or where granting the application poses a "very high risk to competition," is, in SkyBridge's view, consistent with the United States' obligations under the WTO. Article XIV(c) of GATS permits the United States to deny a license where such denial is necessary to secure compliance with laws not otherwise inconsistent with GATS. Similarly, Article XIV<sub>bis</sub> permits the United States to deny an application for a license when it is essential to U.S. national security interests.

II. The ECO-Sat Test Should Not be Applied to the U.S./Non-WTO Routes of WTO Satellite Systems

The Commission also sought comment on whether it should apply the ECO-Sat Test to routes served by WTO Satellite Systems between the United States and non-WTO member nations.<sup>5/</sup> As the FNPRM notes, if such a rule were adopted, it would have to be applied to both U.S. and WTO Satellite Systems in order to meet the United States' national treatment obligation.<sup>6/</sup> Given the likelihood that rules imposed on WTO Satellite Systems in the U.S. will be imposed on U.S. Satellite Systems abroad, and given that the GBT's basic goal is to reduce regulation, SkyBridge opposes applying the ECO-Sat Test to the U.S./non-WTO country routes served by WTO Satellite Systems.

Skybridge's principal concern is that regulations or requirements imposed by the Commission on WTO Satellite Systems are likely to be imposed by other governments on U.S. Satellite Systems seeking access to their markets. Application of the ECO-Sat Test to U.S./non-WTO routes provides the Commission with discretion to deny a WTO Satellite System a license to provide service on a specific route. In turn, other governments may elect to implement the same type of rule, which could lead to U.S. Satellite Systems being denied licenses to provide service between another WTO member country and a non-WTO country.

In addition, one of the goals of the GBT is to reduce regulation and allow the market mechanism to discipline the market participants. If the Commission

---

<sup>5/</sup> FNPRM at ¶ 25.

<sup>6/</sup> FNPRM at ¶ 26.

were to adopt the proposed rule, it would have to be applied to both U.S. Satellite Systems and WTO Satellite Systems, thereby increasing regulation on U.S. Satellite Systems; this, as the FNPRM noted, would undermine the flexibility afforded U.S. Satellite Systems by the Commission's decision in the "DISCO I" proceeding.<sup>7/</sup>

### III. The Proposed Rules on Foreign Ownership are the Best Approach to Ensuring Full and Effective Implementation of the GBT

Skybridge supports the Commission's proposal to "eliminate the ECO test as a component of the Section 310(b)(4) public interest analysis for" applicants for common carrier earth station authorizations with investment by entities from WTO member countries.<sup>8/</sup> Skybridge further supports employing a strong presumption in favor of granting the application, provided the investor's home market is a WTO member country. This rule will ensure that all entities from WTO member countries may invest in entities that hold U.S. earth station authorizations. In turn, this will likely ensure that other WTO member countries will permit U.S. entities to invest in local entities that own earth stations.

As noted in the FNPRM, the FCC would still be able to consider public interest factors under Section 310(b)(4) in determining whether to deny or grant an earth station application. Therefore, if an application raised national security or law enforcement concerns, they could be addressed in a WTO-consistent manner,

---

<sup>7/</sup> Amendment to the Commission's Regulatory Policies Governing Domestic Fixed-Satellite and Separate International Satellite Systems, 11 FCC Rcd. 2429 (1996).

<sup>8/</sup> There would, of course, be no Section 310(b) review of applications seeking to operate earth stations on a non-common carrier basis.

because (as discussed in Section I supra), countries may apply measures that would be otherwise inconsistent with GATS for purposes of national security and law enforcement. Conversely, denying an earth station license to a service supplier whose investors include entities from a WTO member country on the basis of trade policy or foreign policy concerns would likely be inconsistent with GATS for the reasons set out in Section I.

### CONCLUSION

Skybridge has one simple point: U.S. Satellite Systems are likely to receive treatment from other WTO Member states that mirrors that which is accorded by the United States to those foreign states' satellite systems. Therefore, the Commission must ensure that its implementation of the United States' commitments under the GBT is complete and clear, so that U.S. Satellite Systems benefit from the full implementation of the GBT by other WTO Member countries.

Respectfully submitted,

SKYBRIDGE L.L.C.

By: 

Phillip L. Spector  
Jeffrey H. Olson  
David J. Weiler

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
1615 L Street, N.W., Suite 1300  
Washington, D.C. 20036  
Telephone: 202-223-7300  
Facsimile: 202-223-7420

Its Attorneys

August 21, 1997